

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANAND DASRATH,

Plaintiff,

- against -

ROSS UNIVERSITY SCHOOL OF MEDICINE,

Defendant.
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Case No.: CV 07 2433
(C. Amon)
(R. Reyes)

AFFIDAVIT OF
ENRIQUE FERNANDEZ
IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

STATE OF FLORIDA)
) SS.:
COUNTY OF DADE)

ENRIQUE FERNANDEZ, M.D., being duly sworn, deposes and says:

1. I am the Senior Associate Dean for Clinical Sciences at Ross University School of Medicine, School of Veterinary Medicine Limited, sued herein as Ross University School of Medicine ("Ross" or "Ross University"), the defendant in this matter. I submit this affidavit in support of defendant's motion for summary judgment pursuant to F.R.C.P. 56.

2. Defendant Ross University is a corporation organized and existing under the laws of the Commonwealth of Dominica in the Eastern Caribbean with its principal office located at Ross University Boulevard, Portsmouth, Dominica, West Indies.

3. At all times relevant to the allegations in the Amended Complaint I was the Associate Dean for Clinical Sciences and Director of the Advanced Introduction to Clinical Medicine ("AICM") course.

4. Doctor Nancy Perri is and at all times referenced in the Amended Complaint was the Vice President of Academic Affairs at Ross University.

5. I understand that the only surviving cause of action in the Amended Complaint alleges that Ross University breached an alleged contractual agreement with Plaintiff by: (1) failing to accurately record his grades; (2) administratively withdrawing Plaintiff; and (3) withdrawing its sponsorship of Plaintiff to take the U.S. Medical Licensing Examination, Step One Exam (the “USMLE Step 1 Exam”). (Amended Compl. ¶ 19-23).

6. Plaintiff was administratively deemed to have withdrawn from Ross because he failed the AICM course and did not re-enroll semester immediately following to remediate the failing grade, a requirement not only to graduate, but to also participate in the USMLE Step I exam (“Exam”) given by the medical licensing board known as the Educational Commission for Foreign Medical Graduates (“ECFMG”).

7. Similarly, I have firsthand knowledge that his grade in the AICM course was accurately recorded as I was responsible for his grade.

8. Thus, there simply was no breach of any agreement by Ross University.

THE AICM COURSE

9. Ross University’s academic year is divided into trimesters. In their fifth semester, students take the AICM course.

10. Plaintiff took the AICM course that I taught from January 16, 2006 to April 7, 2006.

11. Out of 1,000 possible points for the AICM, Plaintiff received 426.6, which is a failing grade. A copy of the documents reflecting his failing grade in the AICM course is attached hereto as Exhibit “A”.

12. After students complete a course, such as the AICM course, and grades are finalized, their grades are posted on “eCollege” which is a secure website by which students can review their grades.

13. I was contacted by an email from Plaintiff dated April 22, 2006 wherein Plaintiff responded to my email alerting the students that the AICM course grades were posted on eCollege.

14. In Plaintiff’s email he requested that I discuss his failing AICM grade with him. A copy of my email to Plaintiff alerting him that the AICM grades were posted and Plaintiff’s April 22, 2006 response acknowledging the failing grade is attached hereto as Exhibit “B”.

15. On April 24, 2006 Plaintiff participated in a telephone conversation with me regarding Plaintiff’s failing AICM grade.

16. I reviewed Mr. Dasrath’s failing grade prior to our telephone conversation on April 24, 2006.

17. During our telephone conference we discussed, among other things, that Plaintiff would need to repeat the AICM course in the semester starting on May 22, 2006. A memorandum to the file dated April 24, 2006 memorializing the conversation is attached hereto as Exhibit “C”.

18. We also discussed that Plaintiff would get individualized attention to help him succeed in the AICM course and I suggested that I would work closely with him. See Exhibit “C”.

19. Plaintiff never registered to re-take the AICM course.

20. The essence of Plaintiff’s lawsuit is his challenge of the failing grade he received.

PLAINTIFF'S ADMINISTRATIVE WITHDRAWAL

21. The Ross University Student Handbook of Academic Rules and Regulations (“Handbook”) provides that an administrative withdrawal is required when the student does not return to campus to register for the following semester. A copy of the Handbook in effect during the 2006 semester is attached hereto as Exhibit “D” and p. 23 contains the relevant provision.

22. Plaintiff's failure to reregister and attend the AICM course that began on May 22, 2006 required Plaintiff to be administratively withdrawn from Ross University.

23. Plaintiff was notified of the administrative withdrawal by letter dated June 29, 2006. A copy of this letter is attached hereto as Exhibit “E”

24. As a result of his administrative withdrawal Plaintiff was no longer enrolled as a student at Ross University effective May 22, 2006. See also letter attached as Exhibit “F.”

USMLE STEP ONE EXAM

25. The USMLE Step 1 Exam, administered by ECFMG, is one of several qualifying exams which foreign medical school graduates must complete and pass before becoming licensed to practice medicine in the United States.

26. Ross University students apply to sit for the USMLE Step 1 Exam while their fifth semester AICM course is in progress.

27. Students must be enrolled at Ross University both at the time they apply to take the examination and on the date the examination is administered.

28. Ross University certifies students to take the USMLE while the AICM course is in progress under the assumption that they are going to pass the course or continue to make satisfactory progress in their studies by retaking the failed AICM course.

29. As part of the application process, a Ross University official is asked to certify that the “photograph, signature and information” entered in the application is accurate as well as checking a box to indicate whether the applicant is “officially enrolled” or “a graduate” of Ross University.

30. Plaintiff submitted for Ross University certification two applications to take the USMLE Step 1 exam on July 27, 2006.

31. The first application was submitted to Ross University and certified on March 20, 2006 but was rejected by ECFMG because of an issue with Plaintiff’s birth date. A copy of the certification page is attached hereto as Exhibit “G”.

32. In order to ameliorate the birth date problem, a second application was submitted to Ross University and certified on May 5, 2006. A copy of the certification page is attached hereto as Exhibit “H.”

33. At the time of Plaintiff’s two applications, Plaintiff was enrolled at Ross University and the applications reflected as such.

34. It was not until Plaintiff failed to register and attend the first day of class on May 22, 2006 that he was no longer enrolled at Ross University.

PLAINTIFF BECOMES INELIGIBLE TO TAKE THE USMLE STEP ONE EXAM

35. According to the Handbook, to be eligible to take the USMLE Step 1 Exam, a student must have: (1) passed all courses in the basic science curriculum during the first four semesters; (2) have successfully completed the fifth semester AICM course; and (3) have passed National Board of Medical Exams (“NBME”). See Exhibit “D”, p. 13.

36. Plaintiff passed all courses in the basic science curriculum and passed the NBME but did not pass the AICM course.

37. Moreover, ECFMG requires that a student be enrolled in medical school both at the time the individual applies for the examination and at the time the individual takes the examination. A copy of a letter from ECFMG to plaintiff reflecting this is attached hereto as Exhibit "F."

38. Plaintiff was enrolled at the time that he applied for the USMLE Step 1 Exam but was not enrolled when the examination was administered on July 27, 2006.

39. Plaintiff was not eligible to take the USMLE Step 1 Exam because he failed the AICM course and because he was not an enrolled student based on his status as "administratively withdrawn."

THE JULY 27, 2006 USMLE STEP 1 EXAM

40. Plaintiff was aware that he failed the AICM course on or before April 22, 2006 and that he was administratively withdrawn from Ross University effective May 22, 2006 by the letter dated June 29, 2006. It is my understanding that despite these facts he sat for the July 27, 2006 USMLE Step 1 Exam.

41. Several days before the July 27, 2006 USMLE Step 1 Exam was scheduled to be administered, it is my understanding that Plaintiff commenced an action in the Supreme Court of the State of New York, Queens County (Index No. 15989/2006) and moved by order to show cause to compel Ross University to re-enroll Plaintiff in the University and to sponsor Plaintiff for the USMLE Step 1 exam.

42. I understand that the case was dismissed.

43. ECFMG requires that the student notify it if a student no longer remains eligible to take the USMLE Step 1 Exam. See Exhibit "F."

44. It is my understanding that Plaintiff did not notify ECFMG that he was not enrolled at Ross University on July 27, 2006 when he sat for the USMLE Step 1 Exam.

45. Plaintiff took the USMLE Step 1 Exam despite his ineligibility.

46. It is my understanding that ECFMG has withheld the release of Plaintiff's USMLE Step 1 exam scores because Plaintiff was not eligible to take the exam.

PLAINTIFF BECOMES INELIGIBLE FOR THE POST-AICM SEMESTER BREAK

47. Plaintiff appears to claim in this lawsuit that he was eligible for a sixteen week vacation period after completion of the fifth semester – thus, he argues he could not have been “administratively withdrawn” during that time period.

48. It should be noted that only students who successfully pass the fifth semester AICM course are eligible for a 16 week vacation period during which time they remain fully enrolled.

49. Plaintiff did not qualify for this 16 week break since he failed the AICM course and did not re-register to remediate the failing grade by registering for the AICM course that began on May 22, 2006.

TRANSCRIPT OF GRADES

50. Plaintiff also appears to claim in this lawsuit that he did not receive what he characterizes as an “official” grade in the AICM course until he received an “official” transcript from Ross University which he contends was not received until August 2006.

51. There is nothing in the Handbook that requires Ross University to administer transcripts to students in any timeframe or at all.

52. Ross University issues school transcripts as a courtesy to its students either on request or by regular mailings.

53. Individual course grades are available through eCollege in advance of the grade being available on an official school transcript.

54. Plaintiff requested a copy of a transcript on or about May 15, 2006.

55. At that time the fifth semester AICM course grade was not yet posted to his school transcript. A copy of Plaintiff's request and the transcript sent in response is attached hereto as Exhibit "I."

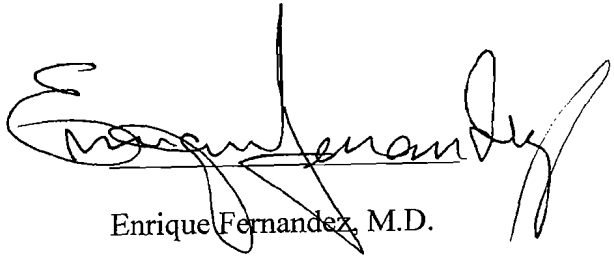
56. Plaintiff requested a transcript on or about August 1, 2006. A copy of this request is attached hereto as Exhibit "J."

57. At that time the fifth semester AICM course grade was reflected in his school transcript. A copy of the requested transcript is attached hereto as Exhibit "K."

58. The fact that there is no grade listed on the transcript requested by Plaintiff in May does not indicate that he in fact passed the AICM course.

59. Similarly, Plaintiff's contention that he did not receive the failing grade until he received a transcript reflecting the grade in August 2006 does not indicate that he did not "officially" fail until such time.

60. For the reasons set forth herein and in the accompanying memorandum of law, summary judgment should be granted as there is no breach of contract on the part of Ross University.


Enrique Fernandez, M.D.

Sworn to before me this
27 day of February, 2011


Notary Public

